

REMARKS

This Amendment is submitted in reply to the non-final Office Action mailed on October 7, 2005. Claims 1-33 are pending in this application. In the Office Action, Claims 30-33 are rejected under 35 U.S.C. §101, Claims 1-5, 9, 20-21, 25-26 and 28-29 are rejected under 35 U.S.C. §112, second paragraph, Claims 1-29 are rejected under 35 U.S.C. §102 and Claims 1-29 are rejected under 35 U.S.C. §103. In response Claims 30-33 have been amended. This amendment does not add new matter. In view of the amendment and/or for the reasons set forth below, Applicant respectfully submits that the rejections should be withdrawn.

In the Office Action, Claims 30-33 are rejected under 35 U.S.C. §101 as allegedly being directed to non-statutory subject matter. In response, Claims 30-33 have been amended to address the informalities cited by the Patent Office. The amendments are fully supported in the specification, for example, at page 3, lines 3-13. Based on at least these noted reasons, Applicant believes that Claims 30-33 fully comply with 35 U.S.C. §101. Accordingly, Applicant respectfully requests that the rejection of Claims 30-33 under 35 U.S.C. §101 be withdrawn.

In the Office Action, Claim 1-5, 9, 20-21, 25-26 and 28-29 are rejected under 35 U.S.C. §112, second paragraph, as allegedly being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention. Specifically, the Patent Office alleges that the terms “coat system” and “pre-biotic” are not clear.

Applicant respectfully submits that one having ordinary skill in the art can understand the scope of the terms “coat system” and “pre-biotic”, especially in view of the specification. For example, the “coat system” includes all the aspects of the coat (e.g. root and follicles of the hair), including the skin, of a pet animal. Furthermore, the examples describe various parameters of the skin and coat system that were determined in test trials measuring the efficacy of the claimed pet food composition. See, specification, page 9, lines 2-33. In view of the specification, the scope of the term “coat system” is clear to one having ordinary skill in the art.

The specification also states that the term “prebiotic” means a substance or compound that is fermented by the intestinal flora of the pet and promotes the growth or development of certain bacteria in the gastro-intestinal tract at the expense of pathogenic bacteria. See, specification, page 3, lines 19-24. Further, the specification gives numerous examples of pre-biotics including oligosaccharides such as inulin and how they may be provided. See,

specification, page 4, lines 15-32. As a result, one having ordinary skill in the art would be able to determine the metes and bounds of the present claims regarding the term “pre-biotic” in view of the specification.

Applicant also respectfully submits that Claims 7 and 13 are not duplicative. For example, Claim 7 (and Claim 1 which Claim 7 is based on) is directed, in part, to a method of maintaining or enhancing the healthy functioning of the skin and coat system of a pet. Claim 13 is directed, in part, to a method for improving or maintaining the coat of a pet. As a result, there are distinctions between Claims 7 and 13.

Based on at least these noted reasons, Applicant believes that Claims 1-5, 9, 20-21, 25-26 and 28-29 fully comply with 35 U.S.C. §112, second paragraph. Accordingly, Applicant respectfully requests that the rejection of Claims 1-5, 9, 20-21, 25-26 and 28-29 under 35 U.S.C. §112 be withdrawn.

In the Office Action, Claims 1-29 are rejected under 35 U.S.C. §102(b) as anticipated by U.S. Patent No. 5,776,524 to Reinhart (“*Reinhart*”). Applicant respectfully disagrees with and traverses this rejection for at least the reasons set forth below.

The instant claims are directed to, in part, methods for improving or maintaining the skin and coat system of a pet. Contrary to the present claims, *Reinhart* fails to disclose or suggest any methods for improving or maintaining the skin and coat system of a pet.

For the reasons discussed above, Applicant respectfully submits that Claims 1-29 are novel, nonobvious and distinguishable from the cited reference. Accordingly, Applicant respectfully requests that the rejection of Claims 1-29 under 35 U.S.C. §102 be withdrawn.

In the Office Action, Claims 1-29 are rejected under 35 U.S.C. §103 as being unpatentable over *Reinhart* in view of *LABDIET* '98, WO 9856263 to Marsh et al. (“*Marsh*”) and U.S. Patent No. 6,156,355 to Shields et al. (“*Shields*”). Applicant believes this rejection is improper and respectfully traverses it for at least the reasons set forth below.

Applicant respectfully submits that, even if combinable, all of the claimed elements are not taught or suggested by the cited references. For example, *Reinhart*, *LABDIET* '98, *Marsh* and *Shields* all fail to disclose or suggest Applicant's claimed methods for improving or maintaining the skin and coat system of a pet using, for example, prebiotics and/or probiotics.

Applicant has surprisingly found that administering to a pet a nutritional agent which promotes the growth of bifido- and lactic-bacteria in the gastro-intestinal tract of the pet improves, or at least maintains, the condition of the skin and coat system of the pet. Experiments using trained evaluation panels were performed to evaluate the skin and coat condition of pets that were fed the pet food compositions in methods of the present invention. Parameters evaluated by the panelists included visual parameters, touch parameters, and odor parameters. A full sample range of dogs/cats were selected. Pets that were fed pet foods having the pre-biotics or probiotics were found to have, for example, increased coat shininess, coat softness, skin hydration score and skin elasticity.

Reinhart, LABDIET '98, Marsh and Shields are not even concerned with any methods for improving or maintaining the skin and coat system of a pet using prebiotics and/or probiotics as taught by Applicant and therefore fail to recognize a problem that Applicant's invention solves or advantages that Applicant's invention has. Moreover, *Reinhart, LABDIET '98, Marsh and Shields* provides no teaching, guidance or experiments as to methods for improving or maintaining the skin and coat system of a pet using prebiotics and/or probiotics as Applicant has done. As a result, one having ordinary skill in the art would not be motivated to arrive at Applicant's present claims and Applicant's results in view of *Reinhart, LABDIET '98, Marsh and Shields*.

Moreover, Applicant respectfully submits that the Patent Office has improperly applied hindsight reasoning by selectively piecing together teachings of each of the references in an attempt to recreate what the claimed invention discloses. As the Federal Circuit explained, "the mere fact that the prior art may be modified in the manner suggested by the examiner does not make the modification obvious unless the prior art suggested the desirability of the modification." *In re Fritch*, at 1783-17. One cannot use "hindsight reconstruction to pick and choose among isolated disclosures in the prior art" to re-create the claimed invention. *In re Fine*, 5 U.S.P.Q. 2d 1596 (Fed. Cir. 1988).

For the reasons discussed above, the combination of *Reinhart, LABDIET '98, Marsh and Shields* do not teach, suggest, or even disclose all of the elements of the present claims, and thus, fail to render the claimed subject matter obvious for at least these reasons.


Accordingly, Applicant respectfully requests that the obviousness rejection with respect to Claims 1-29 be reconsidered and the rejection be withdrawn.

For the foregoing reasons, Applicant respectfully requests reconsideration of the above-identified patent application and earnestly solicit an early allowance of same.

Respectfully submitted,

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